

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

UNITED STATES OF AMERICA)
)
)
VS.) CRIMINAL ACTION NO.
) B-18-CR-8
)
RODNEY MESQUIAS, HENRY)
MCINNIS AND FRANCISCO PENA)
)

TRIAL - DAY NINE
BEFORE THE HONORABLE ROLANDO OLVERA
NOVEMBER 1, 2019

A P P E A R A N C E S

FOR THE UNITED STATES:

MR. KEVIN LOWELL
MR. ANDREW SWARTZ
MR. JACOB FOSTER
ASSISTANT UNITED STATES ATTORNEY
BROWNSVILLE, TEXAS 78520

FOR THE DEFENDANT RODNEY MESQUIAS:

MR. CHARLES BANKER
ATTORNEY AT LAW
118 Pecan Boulevard
McAllen, Texas 78501

MR. HECTOR CANALES
MR. TONY CANALES
ATTORNEYS AT LAW
2601 Morgan Avenue
Corpus Christi, Texas 78405

1 FOR THE DEFENDANT HENRY MCINNIS:

2 MR. ED CYGANIEWICZ
3 ATTORNEY AT LAW
4 1000 E. Madison Street
5 Brownsville, Texas 78520

6 FOR THE DEFENDANT FRANCISCO PENA:

7 MR. ROBERT GUERRA
8 ATTORNEY AT LAW
9 55 Cove Circle
10 Brownsville, Texas 78521

11 FOR THE DEFENDANT FRANCISCO PENA:

12 MS. ADRIANA ARCE-FLORES
13 ATTORNEY AT LAW
14 1414 Victoria Street
15 Laredo, Texas 780404
16
17
18
19
20
21
22
23
24
25

1 THE COURT: Thank you, everyone. Please be
2 seated.

3 Ladies and gentlemen, welcome back.

4 I understand that one of you had a slight
5 emergency that caused some tardiness, but thank you for
6 being here.

7 Let's proceed.

8 MR. LOWELL: Good morning, Your Honor.

9 The United States calls Michael Petron.

10 THE COURT: Please remain standing, sir.
11 We'll swear you in.

12 THE CLERK: Please raise your right hand.

13 (WITNESS SWORN IN.)

14 THE WITNESS: I do.

15 THE COURT: Thank you, sir.

16 Please make yourself comfortable, position
17 the microphone closely to you and speak loudly and
18 clearly into the microphone.

19 THE WITNESS: Yes, sir.

20 THE COURT: Thank you, sir.

21 MR. LOWELL: May I proceed?

22 THE COURT: Please.

23 DIRECT EXAMINATION

24 BY MR. LOWELL:

25 Q. Good morning. Please introduce yourself to the

1 jury.

2 A. Good morning. My name is Michael Petron, spelled
3 P-e-t-r-o-n.

4 Q. Mr. Petron, what is your current occupation?

5 A. I'm a managing director at a consulting firm
6 named Stout.

7 Q. Could you walk through your education.

8 A. Sure. I have an undergraduate degree with a
9 double major in economics and statistics, I have one
10 Master's Degree in Statistics and one Master's Degree in
11 Accounting.

12 Q. How about your professional qualifications?

13 A. I am a certified public accountant, licensed in
14 the Commonwealth of Virginia and I'm also a certified
15 fraud examiner.

16 Q. How about speaking engagements?

17 A. I've had numerous speaking engagements over the
18 years. At least, I'd say, 20 to 30 speaking engagements
19 across the country, generally speaking to law
20 enforcement and to the United States attorneys offices.

21 Q. You work for a company called Stout; is that
22 right?

23 A. I do.

24 Q. And how many people do you manage at Stout?

25 A. About 115 people.

1 Q. Have you assisted the Department of Justice in
2 the investigation of this case?

3 A. I have.

4 Q. When did you start?

5 A. Would have been sometime in the fall, say of
6 October 2017.

7 Q. And have you worked on other health care fraud
8 investigations?

9 A. I have.

10 Q. Approximately, how many?

11 A. 100, 150. I'm not sure.

12 Q. Now, have you been retained by the Government
13 before to testify as a witness?

14 A. I have.

15 Q. And have you been retained by the private sector
16 as a witness?

17 A. I have.

18 Q. How many times have you testified in federal
19 court in criminal cases?

20 A. Give or take, 20.

21 Q. Focusing on this case, when were you retained?

22 A. In the fall, so October 2017.

23 Q. And what were you retained to do?

24 A. A few different things. I was retained to
25 examine financial records, so probable -- primarily bank

1 accounts and credit card statements, and then the second
2 major area was health care claims data.

3 Q. Were you hired to make a conclusion in this case?

4 A. No.

5 Q. Were you hired to give an opinion about the
6 Defendant's guilt or innocence?

7 A. No.

8 Q. What are you summarizing in general?

9 A. I'm summarizing voluminous data. So voluminous
10 bank accounts, 12 credit cards, hundreds of thousands of
11 records contained within the Medicare claims data.

12 Q. Now, have you analyzed every single bank account
13 that Merida Group?

14 A. I have not.

15 Q. Every single account of the Defendants?

16 A. I have not.

17 Q. Approximately, how many bank accounts did you
18 analyze?

19 A. 35.

20 Q. For multiple banks?

21 A. Multiple banks.

22 Q. Now, you talked about the banking information,
23 how about the claims data, did you also analyze claims
24 data?

25 A. A ton.

1 Q. For the Merida Group?

2 A. Correct.

3 Q. For Francisco Pena?

4 A. Yes.

5 Q. Now, when you went through the Medicare data,
6 what did you do?

7 A. Well, first and foremost I upload the Medicare
8 data into data basis on my platform, and then, from
9 there, I will summarize that information depending upon
10 whatever characteristics are asked of me.

11 Q. How voluminous was -- were the claims data and
12 banking in this case?

13 A. Extensive. I believe the claims data was over
14 800,000 records and we had 3500 - 4,000 pages of bank
15 records.

16 Q. Did you prepare exhibits in this case?

17 A. I did.

18 Q. What kind of exhibits?

19 A. They're referred to as summary exhibits.

20 Q. And are those summary exhibits based on your
21 analysis of the claims data?

22 A. That's correct.

23 Q. Your analysis of the banking records?

24 A. Correct.

25 Q. Could we call up Government's Exhibit L-1

1 together with Government's H-16, please.

2 Mr. Petron, what does this depict?

3 A. So, Government Exhibit L-1 is a map of the State
4 of Texas showing the location of the Merida Group
5 entities. That's on the left.

6 On the right is a map that I created commonly
7 referred to as a heat map that shows the dispersion of
8 Merida Group beneficiaries throughout the State based
9 upon the Medicare billing data.

10 Q. When you say Medicare beneficiaries, is that --
11 what does that mean in plain English?

12 A. A patient.

13 Q. A patient of the Merida Group?

14 A. Correct, a Medicare patient of the Merida Group.

15 Q. Now, when you created this heat map, what, if
16 anything, did you notice about the aspersion of
17 patients?

18 A. Well, you can observe here that there are
19 patients located throughout the State. I mean, the
20 dispersion is obviously centralized down here in the
21 Valley and in the major metropolitan areas, but it's not
22 limited to those areas.

23 You can see the blue dots are, you know, spread
24 pretty consistently throughout all of the population
25 centers.

1 Q. Is there a concentration of patients right here
2 in the Valley?

3 A. That's correct.

4 Q. If we could bring up L-2, please, together with
5 H-15.

6 Mr. Petron, what do we see here?

7 A. So what we see here on the left is a group -- is
8 a showing by county of where the Merida Group entities
9 were located and the medical directors at particular
10 entities.

11 And on the right, this heat map is for population
12 centers in more of more than 500 beneficiaries. So you
13 can see in red here the -- the bright dots are the major
14 metropolitan areas, and then you can see some of the
15 yellowish, you know, green dots in Laredo and some other
16 places, but not down here in the Valley, Houston,
17 San Antonio.

18 Q. Now, the doctors in the Medicare -- the medical
19 director chart, were you able to draw certain
20 connections, links, between them and Merida Group
21 patients?

22 A. Correct. So, for example, Dr. Pena in Laredo, if
23 you look at the Medicare billing data, you can see that
24 Dr. Pena is often an attending physician for those
25 patients.

1 Q. Those are patients of the Merida Group?

2 A. Correct.

3 Q. In Laredo?

4 A. Correct.

5 Q. How about Dr. Virlar and patients in San Antonio?

6 A. The same holds true there where Dr. Virlar is the
7 attending physician for a number of Medicare
8 beneficiaries in the San Antonio area.

9 Q. How about Dr. Carrillo and Merida Group patients
10 in the Valley?

11 A. Mr. Carrillo is present in the Merida Group for
12 those patients in the Valley.

13 Q. Can you pull up H-15 together with H-8.

14 Now, Mr. Petron, focusing on your analysis of the
15 claims data, how much money -- could you tell the jury
16 how much money the Merida Group billed?

17 A. The Merida Group billed a little over
18 \$152,000,000.

19 Q. 152,000,000?

20 A. \$152,000,000.

21 Q. Across the State of Texas?

22 A. This is even broader than the State of Texas,
23 my -- my map I restricted to the State of Texas, but I
24 think there are about 300 beneficiaries or patients
25 outside of the State of Texas.

1 Q. So it doesn't include everybody?

2 A. This map does not include everyone.

3 Q. Now, based on your analysis of the claims data,
4 how much was paid to the Merida Group on those
5 150,000,000 -- approximately, \$150,000,000 in bills?

6 A. It's about \$124,000,000, if memory serves.

7 Q. And where was that money deposited?

8 A. Into various Merida Group bank accounts.

9 Q. And who controlled the Merida Group's corporate
10 bank accounts?

11 A. By and large, Mr. Mesquias.

12 Q. And based on your analysis of the Medicare
13 documents, during what timeframe did he control those
14 accounts?

15 A. I had access to the banking records from,
16 approximately, 2011 through 2018, and he was the
17 signatory on those accounts for those time periods.

18 Q. And prior to that, did you also have access to
19 Medicare -- certain Medicare records?

20 A. I had access to Medicare records going back to
21 2009, but no banking records before 2011.

22 Q. Okay. And do those records pre-2011, do they
23 include EFT agreements?

24 A. Correct.

25 Q. And what are EFT agreements?

1 A. They're agreements between a provider and the
2 Medicare program about the electronic data interchange
3 of information.

4 Q. And based on your review of those records,
5 between 2009 and 2011, who controlled the corporate bank
6 accounts at the Merida Group?

7 A. Mr. Mesquias.

8 Q. That was Medicare money going into those
9 accounts?

10 A. Correct.

11 Q. What are proceeds, Mr. Petron?

12 A. Proceeds, as I've defined them in this matter,
13 are any monies paid from Medicare into the Merida Group.

14 Q. Were you able to track proceeds from Medicare
15 into Merida Group bank accounts?

16 A. I was.

17 Q. Could we go to Government's Exhibit L-3, please.

18 Now, Mr. Petron, in your analysis of those bank
19 records, did you identify a financial relationship, a
20 link between Rodney Mesquias and Francisco Pena?

21 A. I did.

22 Q. What did you see?

23 A. I saw money being transferred from the Merida
24 Group entities to Mr. Pena.

25 Q. Approximately, how much money did you identify

1 from Rodney Mesquias to Francisco Pena?

2 A. Testing my memory. I believe it's \$108,000,
3 approximately.

4 Q. Could we do a side by side, L-3 together with
5 H-18.

6 A. This would be one example of a check written from
7 Professional Hospice to Dr. Pena in the amount of
8 \$2,000.

9 Q. Mr. Petron, who signed this check?

10 A. That appears to be Mr. Mesquias' signature.

11 Q. Let's pull up H-17 on the right.

12 Is this another check to Mr. Pena?

13 A. Correct. This is an another example of a check
14 from Professional Hospice signed by Mr. Mesquias for
15 services in February of 2014.

16 Q. Going to H-19, what is this?

17 A. This is a third example for \$5,000 to Dr. Pena
18 signed by Mr. Mesquias, and the memo reads: MD
19 directorship August and September services.

20 Q. Now, in addition to that relationship between the
21 Merida Group and Francisco Pena, did you also identify a
22 financial link between the Merida Group and Henry
23 McInnis?

24 A. I did.

25 Q. Let's pull up H-65. Put H-65 on the right and

1 then also pull up that together with L-3, please.

2 Mr. Petron, approximately, how much money did the
3 Merida Group pay Henry McInnis?

4 A. Approximately, \$513,000. You can see that sort
5 of on the bottom right.

6 Q. And could we add to the right Government's
7 Exhibit H-66.

8 In addition to Dr. Pena, Henry McInnis, did you
9 also identify a financial relationship between the
10 Merida Group and Dr. Eduardo Carrillo?

11 A. I did.

12 Q. How much money was paid to Dr. Carrillo?

13 A. I believe it's in the two hundred thousand dollar
14 range, \$224,000, I believe.

15 Q. Now, did you also identify money in a financial
16 relationship between the Merida Group and Joe Garza?

17 A. I did.

18 Q. Approximately, how much money did the Merida
19 Group pay Joe Garza?

20 A. \$258,000, approximately.

21 Q. Could we pull up H-11 together with L-2.

22 Mr. Petron, did you establish a connection
23 between patients living in Laredo and the Merida Group?

24 A. I did.

25 Q. Would you tell the jury about that.

1 A. Sure. So on the chart on the left-hand side,
2 this is a summary of all patients where Dr. Pena was the
3 attending physician at any of the Merida Group entities.
4 So you can see that there were billings under four
5 entities, two of them, obviously, much larger than the
6 others, Professional Hospice Care and Virtue Home
7 Health.

8 In total, Dr. Pena was attending 423 patients
9 with 986 claims. There was a total billed amount on
10 those claims of \$4.5 million with a paid amount of just
11 over \$3.1 million.

12 Q. And to be clear, those were patients of the
13 Merida Group?

14 A. Correct, these are all patients of Merida Group
15 entities.

16 Q. And who was the attending doctor for those
17 patients?

18 A. Dr. Pena.

19 Q. Did you also identify links between Dr. Virilar,
20 Dr. Pena on the one hand and a specific Merida Group
21 entity?

22 A. I did.

23 Q. Were they the top two doctors for a specific
24 Merida Group entity?

25 A. Yes.

1 Q. Was that an entity controlled by Rodney Mesquias?

2 A. It was.

3 Q. Could we pull up H-52 together with L-2.

4 Would you tell the jury about this exhibit?

5 A. So again, on the left, just focusing on the
6 Professional Hospice Care entity within the Merida
7 Group, Dr. Virlar and Dr. Pena represented the majority
8 of patients seen at that entity.

9 Dr. Virlar, 46 percent of the patients; Dr. Pena
10 second at 20 percent of the patients.

11 Q. Let's go to Government's Exhibit H-3, please.

12 Mr. Petron, what does this depict?

13 A. This depicts a summary of the banking records
14 where the Merida Group entities paid Mr. Mesquias by
15 check. In total, Mr. Mesquias received over \$4.1
16 million.

17 Q. And is this \$4.1 million separate from the
18 124,000,000 you mentioned earlier?

19 A. I wouldn't necessarily say separate, it could
20 have been derived from the \$124,000,000.

21 Q. Okay. And to be clear, Rodney Mesquias
22 controlled this personal account here?

23 A. These checks, I was never -- I was only able to
24 locate \$50,000 of these checks being deposited into
25 Mr. Mesquias' personal accounts. So this information is

1 derived from checks written off of the Merida Group
2 entity accounts. But I never saw them actually being
3 deposited.

4 Q. Let's go to Government's Exhibit L-3 together
5 with H-7.

6 What is this, Mr. Petron?

7 A. So on the right we have payments to an individual
8 named Micaela Wooten from Professional Hospice Care.
9 She received over \$414,000.

10 Q. And what does it indicate in the memo line for
11 Ms. Wooten?

12 A. A profit distribution, or a distribution -- some
13 type of profit sharing or distribution.

14 Q. Do you have any idea whether Ms. Wooten was an
15 owner of the company?

16 A. It's my understanding that she was listed as an
17 owner.

18 Q. Let's go to -- let's go to Exhibit L-2 together
19 with H-7, please.

20 What is this document, Mr. Petron?

21 A. The one on the left is a -- is the map that we
22 have seen with the medical directors at various
23 entities, and the right is the -- the payments to
24 Ms. Wooten.

25 Q. Could we go to Government's Exhibit H-10 together

1 with Government's Exhibit L-2.

2 A. So on the right, on Exhibit H-10, we have a
3 summary of Medicare billed and paid amounts where
4 Dr. Carrillo was the attending physician. So you can
5 see that there are a total of 147 unique beneficiaries,
6 441 claims with over \$1.9 million billed and \$1.3
7 million paid.

8 Q. Let's pull up Government's Exhibit H-11 together
9 with L-2.

10 A. This a summary of where Dr. Pena was the
11 attending physician, we briefly, I think, looked at this
12 already where Dr. Pena primarily in Professional Hospice
13 and Virtue Home Health had 123 beneficiaries, 986
14 claims, 4.5 million billed, 3.1 million paid.

15 Q. Let's please pull up L-2 together with H-12.

16 A. H-12 changes the summary to focus more on
17 Dr. Virlar in the San Antonio area. Dr. Virlar had a
18 total of 833 beneficiaries, almost 4,000 claims with
19 over \$17,000,000 billed and over \$13,000,000 paid for
20 those Merida Group patients.

21 Q. So among the three doctors that worked for Rodney
22 Mesquias, among those three depicted in the map, was
23 Dr. Virlar the top doctor?

24 A. By far.

25 Q. Let's go to H-14, please, together with L-2.

1 Focusing on these three doctors, Dr. Virlar,
2 Dr. Pena, Dr. Carrillo, approximately, how many patients
3 were tied to these specific doctors?

4 A. 1,096.

5 Q. Let's pull up L-2 together with H-20.

6 What does this depict, Mr. Petron?

7 A. H-20 is an example of a check to Dr. Carrillo in
8 the amount of \$5,750 for 27 face-to-face.

9 Q. Who signed that check?

10 A. That appears to be Mr. Mesquias' signature.

11 Q. Let's pull up L-2 together with 21.

12 A. This is another example of a check to
13 Dr. Carrillo for \$11,600 signed by Mr. Mesquias for
14 face-to-face.

15 Q. Let's go to L-2 together with 22.

16 A. Yet, a third example, Dr. Carrillo -- Carrillo
17 for \$2,000, memo line ten F2F.

18 Q. Who signed the check?

19 A. It again, it is Mr. Mesquias' name.

20 Q. Let's go to L-2 together with 23.

21 A. This is a check from Bee Caring Hospice, so a
22 different entity, to Dr. Virlar for \$12,200 signed by,
23 again, Mr. Mesquias, although that signature looks
24 slightly different. The memo -- memo line reads: F2F
25 September 2015 services.

1 Q. Let's go to L-2 together with 24.

2 A. Same company check on November 19, 2015 for
3 \$8,800 to Dr. Virilar signed by Mr. Mesquias with a memo
4 reading October 2015, 44 face-to-face visits.

5 Q. Let's go to L-2 together with 25.

6 A. Again, Bee Caring Hospice, November 2016, check
7 to Dr. Virilar signed by Mr. Mesquias, 28 F2Fs.

8 Q. Let's go to L-2 together with H-17, please.

9 A. And this is an example to Dr. Pena from
10 Professional Hospice Care for \$2,000 signed by
11 Mr. Mesquias for February 2014 services and \$500
12 face-to-face.

13 Q. Could we jump to H-26.

14 Mr. Petron, is this Jack High, Count Two from the
15 indictment?

16 A. That is correct.

17 Q. And could you tell the jury what this slide
18 depicts?

19 A. This slide depicts a claim of service during
20 Mr. High's certification period, August 14th, 2013
21 through October 12th, 2013 for hospice services in the
22 amount of \$2,567.52.

23 Q. Showing you Government's Exhibit H-28.

24 Is this Count Three from the indictment?

25 A. Correct. This is Count Three for Ms. Perez for a

1 certification of December '13 through March '14 for
2 hospice services with a claim of \$4,089.52.

3 Q. Page 30?

4 A. I believe this is Count Five; is that correct?

5 Q. Count Four.

6 A. Count -- I'm sorry, Count Four. Certification
7 period of November 2013 through February 3rd, '14 from
8 Professional Hospice Care for hospice services with a
9 claim in the amount of \$4,304.70.

10 Q. Let's go to H-32, please.

11 A. This is Count Five for a beneficiary with
12 certification period of June 2014 through August 31st,
13 '14 from Bee Caring Hospice with a claim in the amount
14 of \$4,448.19.

15 Q. Let's go to Government's Exhibit H-34. This is
16 Count Six.

17 A. Finally, Count Six. We have a certification
18 period of February 2016 through April 9th, '16, the
19 provider was Bee Caring Hospice with a claim amount of
20 \$3,202.85.

21 Q. And finally, let's call up Government's Exhibit
22 H-36.

23 Is this Count Seven, Mr. Petron?

24 A. That's correct. Ms. Conti, with a certification
25 period of December '14 through March '15 from Bee Caring

1 Hospice with a claim in the amount of \$1,282.61.

2 Q. And so each of these examples that we just went
3 through, these were specific claims that were submitted
4 to Medicare?

5 A. That is correct.

6 Q. They were submitted to Medicare by the Merida
7 Group?

8 A. Correct.

9 Q. And did Medicare pay the Merida Group for each of
10 these specific claims?

11 A. Correct.

12 Q. Did you also identify the movement of money
13 between and among various Merida Group entities?

14 A. I did.

15 Q. Let's go to L-2 together with H-47.

16 Tell the jury about that.

17 A. So I found numerous transactions between -- I'm
18 sorry, do you want me to speak to this chart or?

19 Q. Not that chart but just generally what did you
20 see?

21 A. I found numerous transactions between the various
22 Merida Group entities with BRM being the central -- the
23 central account that was used. So millions of dollars
24 being sent to and from the Merida Group entities into
25 and out of the BRM account.

1 Q. And was BRM based in the Valley?

2 A. That's correct.

3 Q. Could we go to L-1 and H-57.

4 A. There we go, yeah. So the summary on the
5 right-hand side represent the movement of money between
6 2011 and 2017 to and from BRM Home Health. So you can
7 see the amounts in red are amounts being deposited into
8 BRM while the amounts in black are amounts that BRM is
9 sending to the other Merida Group entities.

10 So in -- in most situations, I think in all but
11 one or two situations there is more money moving into
12 BRM than going out from BRM.

13 Q. Could we go to H-58, please.

14 A. So H-58 represents examples of payments from BRM
15 Home Health to those entities, but these are specific
16 examples over \$10,000 where I was able to trace the
17 Medicare proceeds through the Merida Group entities from
18 BRM to another Merida Group entity.

19 Q. How about H-61?

20 A. Same example -- same type of an example, but in
21 this situation these are Merida Group entities paying
22 the Chase Credit cards in the amounts over \$10,000, and
23 the amounts in red represent how much Medicare money was
24 contained within each payment.

25 Q. If we could go to H-62, please.

1 A. Yet, a third type of an example where the Merida
2 Group entities are paying off an American Express or
3 numerous American Express credit cards.

4 Q. Now, as a part of your analysis, your financial
5 analysis, did you look at activity in Las Vegas?

6 A. I did.

7 Q. And just describe that for the jury at a high
8 level?

9 A. So at a high level I went through the Chase
10 credit card transactions, they were here either in the
11 name of one of the Merida Group entities or Mr. Mesquias
12 personally, and identified transactions over \$1,000. I
13 classified them into various categories, one of which
14 was expenses in Las Vegas.

15 Q. Generally, what kinds of expenses would you --
16 would you see?

17 A. I put them into three or four categories. Like
18 hotel, nightclubs, there were dining expenses and
19 tickets and shows.

20 Q. Showing you Government's Exhibit H-46.

21 Can you walk me through this example?

22 A. Sure. H-46 is the top level summary of purchases
23 over \$1,000 for categories that I have generally
24 referred to as lifestyle categories.

25 So you have at the top travel, \$167,000; Spurs,

1 San Antonio Spurs basketball, \$139,000; various tickets,
2 so these are concerts and shows, \$122,000; jewelry store
3 expenses for jewelry related things, 118,000; expenses
4 related to Las Vegas, 112,000; and then so on down this
5 list.

6 Q. Let's go to H-48, please.

7 A. So H-48 then represents the details that make up
8 that previous chart that I just gave you.

9 So, for example, for dining there was a total of
10 \$31,000; for transactions over \$1,000, these are the
11 restaurants where those transactions took place. Bike
12 transactions at 16,900, and then jewelry transactions at
13 over \$118,000.

14 This is page 2. This has the details of the
15 Las Vegas expenditures as well as retail expenditures,
16 so you can see that there are transactions totalling
17 \$112,000, the largest of which Hakkasan, MB Light
18 Nightclub, Omni of Las Vegas at the very bottom Access
19 Encore for 12,000, those are nightclubs in Las Vegas.
20 On the right-hand side you have retail purchases, the
21 largest Hilburn and Louie Vuitton.

22 Q. If we go to the next page, please.

23 A. So here in the top left are the Spurs,
24 San Antonio Spurs basketball expenses for \$139,000,
25 there's other sport and leisure merchants for \$19,000,

1 generalized tickets, so the largest being expenses for
2 StubHub for \$91,000, and finally vehicle related
3 expenses totalling almost \$62,000.

4 Q. There's a -- there's a -- excuse me. There's a
5 Porsche indicated there in the cars?

6 A. I'm sorry, there's it --

7 Q. A Porsche?

8 A. There's Porsche, there's Land Rover, Jaguar, a
9 BMW expenses.

10 Q. Go to the next page, please.

11 A. These are expenses related to travel, so you can
12 see expenses related to cruise lines, hotels, airfares,
13 ski trips, anything that I could classify as travel
14 totalling over \$167,000.

15 MR. LOWELL: Your Honor, we'll pass the
16 witness.

17 THE COURT: Each side will have 32 minutes.

18 CROSS-EXAMINATION

19 BY MR. HECTOR CANALES:

20 Q. Good morning, Mr. Petron.

21 A. Good morning.

22 Q. How are you doing today?

23 A. Good.

24 Q. All right. My name is Hector Canales and I
25 represent Rodney Mesquias in this case, okay?

1 A. Okay.

2 Q. Now, I'm going to put on the screen with
3 permission with -- from opposing counsel here, this is
4 your -- your CV, correct?

5 A. Correct. When I had hair, yes.

6 Q. Yeah. All right. And so you work for Stout, and
7 how long have you worked for Stout?

8 A. Stout acquired my previous firm in February of
9 2014.

10 Q. All right. And I see here you're from -- your
11 offices are in -- in D.C.?

12 A. Correct.

13 Q. All right. We're kind of mad at Washington right
14 now because of the Astros. But you've got some degrees
15 in -- in accounting and in statistics, correct?

16 A. That's correct.

17 Q. All right. And so you're -- you are a private
18 citizen, I take it, then, right?

19 A. I am.

20 Q. You're not a Government employee?

21 A. I am not.

22 Q. Right. And you don't work for free; do you?

23 A. I do not.

24 Q. No. And you're not -- you're on the clock as we
25 sit here today, right?

1 A. I am.

2 Q. And I believe you said the Government reached out
3 to you sometime in the fall of '17 to contract with
4 your -- with -- with your firm, right?

5 A. That is correct.

6 Q. And that's not an unusual thing; is it?

7 A. It's not.

8 Q. Right. And in fact, you're a -- part of your job
9 is you're a professional witness, right?

10 A. I would not say I'm a professional witness.

11 Q. Well, it's certainly part of your -- part of your
12 responsibilities and -- and duties as when you're
13 working with the Government, right?

14 A. It is ultimately if it comes to it an end that I
15 have do if necessary for a particular matter.

16 Q. When you're doing your work, you have to -- you
17 presume and expect that this work is going to be
18 presented in -- in trials like this one?

19 A. I always have to have that assumption going in,
20 yes.

21 Q. That's right. And as part of your -- your resume
22 here, you list some of your experience as a testifier,
23 right?

24 A. Correct. There -- there are a variety of rules
25 related to testimony, and one of them is to disclose all

1 situations in which I've testified, and so I keep this
2 record, yes.

3 Q. And these are -- these are some of these cases
4 here, right?

5 A. That is correct.

6 Q. And -- and in all of these cases here, you're
7 testifying for the Government, right?

8 A. The fourth one down on -- I'm testifying for the
9 Government, but it's the State of California as opposed
10 to the United States.

11 Q. All right. Not for the Defendants?

12 A. Correct.

13 Q. Is that the case for all of these cases that you
14 list?

15 A. No, there are a few, if you keep going, that I
16 will have testified for private companies, or at the
17 very bottom I testified against the Government.

18 Q. Okay. In civil matters where you had company
19 versus company?

20 A. Some civil matters, company verse company, but I
21 have a number of engagements actively -- active against
22 the Government and I've testified against the
23 Government.

24 Q. Okay. And what's your hourly rate, sir?

25 A. It's \$365.

1 Q. \$365 an hour.

2 A. Correct.

3 Q. All right. P-e-t-r-o-n, right?

4 A. Correct.

5 Q. And in this particular case, we've been provided
6 notice from Mr. Lowell here in the United States back in
7 August of 2019 that you had billed the United States how
8 much?

9 A. At this point it's \$227,000. I think to date
10 it's a little over 250,000.

11 Q. And how much -- and -- and back in August, they
12 still owed you, roughly, \$100,000, right?

13 A. Correct.

14 Q. Is the Government caught up on their bill to you?

15 A. Unfortunately, not.

16 Q. All right. So how much have they paid you?

17 A. They have paid me the difference between these
18 two amounts, so call it 104,000 to date.

19 Q. I'm sorry, I'm slow. So how much -- so they have
20 paid anymore than the 123?

21 A. Oh, I'm sorry, I misread it. I thought the --
22 the right-hand side was the amount outstanding.

23 The amount paid is 123,000 to date, so they owe
24 about 104,000 as of August.

25 Q. Right. So, but as we sit here today, have they

1 paid you anymore than the 123 that they sent back here
2 in August?

3 A. They have not.

4 Q. Okay. All right. So your -- the meter has been
5 running, but they haven't paid -- they haven't paid
6 any -- any money since -- well, actually even this 123,
7 do you remember when they paid that?

8 A. I do not know the date that those payments were
9 made.

10 Q. And do you submit your bills every two weeks,
11 every 30 days?

12 A. Monthly.

13 Q. Monthly, all right. And so are -- is the
14 Government past 30 days, past 60 days, past 90 days,
15 how -- how far behind are they?

16 A. I'd have to look and talk to my accounting
17 people. I'm not exactly sure.

18 Q. Did you bring any of your -- and I take it, sir,
19 that you keep your time, right?

20 A. Absolutely.

21 Q. And the Government probably requires that you do
22 that?

23 A. Correct.

24 Q. Right? And when you submit your bill, you submit
25 some backup information for it, you don't just, you

1 know, you submit a bill and then your -- your time-logs,
2 right?

3 A. For instance, we would have everyday how -- what
4 person, how many hours and the activities that they did.

5 Q. Do you have those time-logs with you?

6 A. I do not.

7 Q. Why not?

8 A. No one asked me to bring them.

9 Q. And so -- now, these -- these exhibits that you
10 went over, as we were going along, we -- we -- we -- I
11 printed them -- I printed them out as - are -- as they
12 were -- as they were being referenced, did you create
13 these?

14 A. Yes, my firm did.

15 Q. Okay. All right. And so this is the part of
16 what you're getting paid for, right, is the creation of
17 these -- of these documents, these pages?

18 A. Yes, sir.

19 Q. All right. And so there are one, two, three,
20 four, five, six, seven, eight, nine, ten, 11, 12, 13,
21 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27,
22 28, 29, 30, 31, 32, 33, 34, 35, 36, 37. 37 pages that
23 they went over with you. So we've got 250K and 37
24 pages, right?

25 A. That were introduced here in Court, yes.

1 Q. So we did 250,000 divided by 37, that's \$6,756 a
2 page, right?

3 A. If that's the way you want do the math, sure. I
4 would never characterize our work in that way.

5 Q. Right. But -- but what it boils down to, what it
6 comes down to here today, that's what -- if we were
7 going to select this -- each page, that's what it would
8 cost per page?

9 A. I wouldn't agree with that statement. That's the
10 way the math works, but I wouldn't agree with the
11 statement.

12 Q. And is that amount, sir, per page greater than
13 the \$1,200 for Ms. Conti?

14 A. The mathematical amount, yes, if you're comparing
15 67 to 1200, yes, 67 is more.

16 Q. And 67 is more than 3200?

17 A. Correct.

18 Q. And it's more than 4400, right?

19 A. Correct.

20 Q. And it's more than 4300, right?

21 A. That's correct.

22 Q. It's more than 4,000?

23 A. That is correct.

24 Q. And it's more than 2500, right?

25 A. That is correct.

1 Q. Now -- and -- and -- if I understand your
2 testimony correctly, all that you've done is summarize
3 and organize and distill down into these 37 pages
4 voluminous documents, right?

5 A. That is correct.

6 Q. And those documents kind of come in two
7 categories, see if you agree with me. One, is going to
8 be the claims data, right?

9 A. Correct.

10 Q. And then the second are going to be bank records?

11 A. Correct.

12 Q. And the -- the -- did you interview or discuss --
13 did you -- did you interview or have any discussions
14 with any doctors in this case?

15 A. I did not.

16 Q. Any nurses?

17 A. I did not.

18 Q. All right. Any of the patients involved?

19 A. I did not.

20 Q. Any of their families?

21 A. No.

22 Q. Okay. The only people you talked to in this case
23 about the -- the -- about the facts of this case are
24 the -- is the Government, right?

25 A. That is correct.

1 Q. Okay. And when it came to evaluating, let's --
2 let's deal with the -- with the bank records side, okay?
3 I think you had some charts here. Well, here, let me
4 put this one up, H-60 -- H-66.

5 You went and summarized payments to Jesus Virilar
6 Cadena, correct?

7 A. That is correct.

8 Q. How did you know, or what -- why did you pick
9 him? Why did you pick Jesus Virilar Cadena?

10 A. I was asked to summarize payments to Dr. Virilar.

11 Q. So the Government provided you with a list of
12 people to go in and say find all the payments, summarize
13 the payments of individual X?

14 A. Correct.

15 Q. All right. And who did they tell you to look at?

16 A. Dr. Virilar, Dr. Carrillo, Dr. Pena, I'm sorry,
17 Mr. Garza, Mr. Mesquias, Ms. Wooten, other entities that
18 were associated with the Merida Group, and I could be --
19 I could be leaving one or two off, I'm sorry.

20 Q. Okay. All right. And so they -- they gave you
21 the assignment, you didn't yourself -- you didn't look
22 at all the people who received money, you just looked at
23 the people they told you to look at?

24 A. Correct.

25 Q. All right. And when it came to -- when it came

1 to looking at -- you analyzed, also, certain expenses,
2 right, like the -- you looked at Vegas, right?

3 A. Correct.

4 Q. All right. Did you look at other business
5 expenses, for instance, did you -- did you go in and
6 look at money spent on quality assurance?

7 A. I looked at all the transactions over \$1,000, so
8 I saw business expenses, but did not summarize those
9 business expenses.

10 Q. Right. But did the Government tell you, hey,
11 look, we want you to look, we want you to look at --
12 at -- at Las Vegas -- they told you to look at Las
13 Vegas, right?

14 A. I think the instructions were look for
15 personal-type related expenses.

16 Q. Okay. All right. And so some of these expenses
17 you're talking about are personal expenses, and some are
18 business expense, right?

19 A. That's a -- an important distinction so I don't
20 know how those expenses were classified on the books and
21 records of the Merida Group entities. I'm just telling
22 you from a layman's understanding what looked like
23 personal versus business.

24 Q. Right. But so I guess what I'm looking at --
25 what I'm wanting to know is, for instance, did you

1 create a summary here -- can you tell us how much Merida
2 spent on computer compliance software?

3 A. So what I do know is that about -- I classified
4 \$867,000 into personal-type expenses. There was another
5 \$900,000 of expenses greater than \$1,000 that I would
6 have classified as some type of business related
7 expense.

8 Q. Right, but you didn't -- you didn't pull out, for
9 instance, you can't tell us, as you sit here today, that
10 whether or not some of these, like for instance, some of
11 these Amex charges here, whether some of those charges
12 went to cover software licensing, compliance licensing?

13 A. Correct. I did not have the American Express
14 detail records to do the analysis.

15 Q. And but -- had the Government told you, hey, go
16 out -- go and find out how much Merida is spending on
17 quality assurance and employees on quality assurance,
18 that's some -- that's something, with your experience
19 you could have done, right?

20 A. Absolutely.

21 Q. Have you been asked to do that, right?

22 A. Had I been asked and had I been -- had access to
23 the records to do that, yes.

24 Q. But those -- you did have access to those
25 records. All of the expenses, all the bills that Merida

1 paid, you -- you had them all?

2 A. I did not have them all. There were many
3 accounts missing, I did not have the American Express
4 records, I did not have the internal accounting
5 documents of the companies, I had the bank statements
6 and the Chase credit cards.

7 Q. Is it your experience, sir, that if the
8 United States of America wants something in the context
9 of litigation like this is if they want it, they can get
10 it?

11 A. It's my experience that sometimes the
12 United States doesn't quite get everything that I would
13 like them to get.

14 Q. Right. But in this case, you don't even know
15 because you didn't ask for things, like, to determine
16 how much money Merida spent on compliance with rules and
17 regulations, right?

18 A. I was never asked to exam compliance. I did ask
19 for further financial documents that I didn't get.

20 Q. How about lawyers' fees? Did you put a category
21 in there, did you look at how much Merida, if any, if
22 they spent any money on lawyers?

23 A. I did not categorize that, no.

24 Q. Okay. Or training, or training, right? Did you
25 break that out?

1 A. I did not.

2 Q. Okay. Or -- or their -- their payroll, did you
3 break out their payroll?

4 A. I did not have access to the payroll accounts.

5 Q. But -- but you went and you pulled out Cirque de
6 Soleil and StubHub?

7 A. Correct.

8 Q. The Government gave you enough information to
9 break out his cars and -- and entertainment, right?

10 A. Correct. I was asked to look for personal-type
11 expenses.

12 Q. Does Stout have season tickets for the Nationals?

13 A. We do not, unfortunately.

14 Q. Is that common though where companies have
15 tickets to professional teams?

16 A. It's not uncommon.

17 Q. Have you, sir, ever been taken to a ball game?

18 A. I have been taken to a ball game.

19 Q. All right. And -- and, sir, did that -- did that
20 ruin your integrity?

21 A. I sure hope not.

22 Q. And, sir, are -- when you get paid, do you get
23 paid by the Government in -- in -- in cash or with a
24 check?

25 A. Usually it's neither one of those, it's a wire

1 transfer.

2 Q. Okay. And when there's a wire transfer, there's
3 usually a memo on there, right, it will say it's for
4 professional services?

5 A. I -- I -- honestly, I don't see the wire details
6 so I'm not sure how they represent it.

7 Q. Already. And but are you being paid here, sir,
8 for your -- for your time or your testimony, which have
9 they bought?

10 A. Time, sir.

11 Q. Why not your testimony?

12 A. I guess it depends upon how you're looking at it.
13 I'm being compensated for my time.

14 Q. And so if I were to say your -- your testimony,
15 that would be an insulting kind of thing to -- to say to
16 you, right, because it implies that you're -- you're
17 being bought, right?

18 A. I guess everyone could take it however they want
19 to take it. I'm compensated for my time, whether I'm
20 analyzing records, whether I'm testifying, whether I'm
21 speaking with someone all the same amount.

22 Q. That -- that's -- that's right. And so it really
23 does depend, right, it's -- on your perspective, right,
24 and how cynical you may be about whether or not somebody
25 like yourself is being paid for their -- their time or

1 their testimony, right?

2 A. I guess I'm not quite following your distinction,
3 or your cynicism comment, I'm here to summarize facts
4 and to tell you facts that I found in the documents and
5 the data that I've received.

6 Q. And so -- all right. So let me -- now, I
7 think -- I want to switch gears to the claims data side.

8 A. Sure.

9 Q. And the claims data side, you received -- it
10 comes in some big spreadsheets, excel spreadsheets,
11 right?

12 A. Correct.

13 Q. All right. And so -- and there's no medical
14 records that come with the claims data, it's just an
15 excel spreadsheet that's got a bunch of numbers on it,
16 right?

17 A. And letters.

18 Q. Numbers and letters, names of doctors, initials
19 of patients, amounts, that sort of thing, right?

20 A. Correct.

21 Q. Okay. And -- let me find this. Sorry, while I
22 find what I'm looking for.

23 It will be the last one that I come across for
24 sure.

25 A. Always is.

1 Q. Here it is, sorry. H-9.

2 And what I want to focus in on here is this
3 column here, number of beneficiaries and the provider
4 name. All right, so we have a series of -- of both
5 hospices and -- and plus home health care companies,
6 right?

7 A. Correct.

8 Q. And -- and, sir, are you -- are you an expert in
9 the regulations, the CFRs and the statutes on home
10 health care and hospice?

11 A. I'm not.

12 Q. Okay. All right. But you know the difference
13 between a hospice and a home health care?

14 A. I do.

15 Q. Okay. And you know here, what we're summarizing
16 here are the -- we have two types of providers here, we
17 have a hospice provider and a home health provider,
18 right?

19 A. Correct.

20 Q. Two different types of patients, right?

21 A. Correct.

22 Q. Okay. And so here they all are on the left. And
23 we're dealing with a total number of beneficiaries, is
24 that -- just so to make sure our lingo is right,
25 beneficiaries are patients, right?

1 A. Right.

2 Q. Beneficiaries they're Medicare beneficiaries,
3 right?

4 A. Specific to Medicare, correct.

5 Q. So in the claims world, in your world, the --
6 they're not patients, they're beneficiaries?

7 A. That's just in my world what they're called, yes.

8 Q. Right. Okay. All right. Now, we're -- just
9 making sure our lingo was on the same page.

10 So we're talking about a total, the total
11 universe of patients, 9,339 patients, right?

12 A. That is correct.

13 Q. And that's where this -- this \$100,000,000 figure
14 comes from, right, are these here? You've got them
15 right here, it's even more than that, 150 and 124?

16 A. Correct. The 152,000,000 is how much was billed
17 to the Medicare program and Medicare paid \$124,000,000.

18 Q. All -- all of those, all of those.

19 A. Correct, all of those.

20 Q. And -- and so, sir, can you -- what percentage --
21 now, you did not -- out of these nine -- 9300 patients,
22 you didn't conduct a random representative sample out of
23 those patients; did you?

24 A. I did not.

25 Q. And it -- as a statistician, you know that in

1 order to fairly and reliably draw any inference from a
2 sample, that sample must be randomly selected and
3 representative of the whole, right?

4 A. I guess it depends upon the outcome and what it
5 is you're trying to randomly represent.

6 Q. Right. If you want to prove that those 9,339
7 patients are fraudulent, you've got a couple of options;
8 one, is you've got to go review every single one of
9 them, right?

10 A. I guess that's one possibility, rather impossible
11 task but, yes.

12 Q. The other possibility -- the other possibility is
13 to go and try to design a statistical tool, right?

14 A. You could.

15 Q. To -- to do that, right?

16 A. You can design a statistical sample to test the
17 representativeness of whether or not the underlying
18 claims are fraudulent or what proportion of those claims
19 are fraudulent.

20 Q. And you didn't do that here?

21 A. That's not what I was asked to do.

22 Q. Okay. And so the answer is you did not do that?

23 A. Correct, that's not what I was asked to do.

24 Q. All right. Just wanted to make clear.

25 And so, sir, can you -- can you tell me, sir,

1 there are, I think Count Two, Count Three, Count Four,
2 Count Five, Count Six and Count Seven, how many patients
3 is that?

4 A. That's six.

5 Q. Six, sir. Six out of nine -- and do you know,
6 sir, whether or not any of these six are hospice or home
7 health patients?

8 A. We can -- I have them listed on the chart so I
9 can tell you.

10 Q. Do you know right now though?

11 A. I think most of them are hospice, but we could
12 just look at them.

13 Q. You're not sure?

14 A. I think they're hospice, we can --

15 Q. Okay. All of them?

16 A. I -- I know my memory is that most of them are
17 hospice.

18 Q. Okay. And what --

19 A. I don't know if they're all hospice.

20 Q. -- percentage, sir, is six out of 9,339?

21 A. A small one.

22 Q. Can you work it out?

23 A. Sure. .06 percent.

24 Q. Point 0 what?

25 A. Six.

1 Q. Six percent.

2 A. Correct.

3 Q. So we got 9,339 versus 6 equals .06?

4 A. Correct.

5 Q. So these patients here, that's an extremely small
6 number, right?

7 A. Correct. And it's my experience that the
8 Government doesn't try to allege every single patient in
9 an indictment.

10 Q. Right. And these particular patients, you didn't
11 pick them; did you?

12 A. I did not.

13 Q. And so from a statistical standpoint, sir, these
14 six, because they're not the product of a random
15 generalized sample, cannot tell you anything about the
16 rest of the 9,000, right? From a statistical
17 mathematical standpoint?

18 A. I mean, if you're asking my expert opinion as a
19 statistician, those six are not drawn from a valid
20 statistical random sample.

21 Q. Therefore --

22 A. But I wouldn't --

23 Q. Therefore, you cannot extrapolate from them,
24 correct?

25 A. So if I could finish. So I would not want to do

1 a random statistical extrapolation. It doesn't mean the
2 six can't be instructive in some way, just not
3 statistically.

4 Q. Right. And if you can't do it statistically in
5 your world means you can't do it reliably, right?

6 A. If I was asked to produce an estimate of the
7 loss, or an estimate of the amount of fraud in this case
8 and asked to give an expert opinion, using statistics,
9 then, yes, I would want to do that statistical sample,
10 but there's many ways to slice an apple.

11 Q. Right. But it hasn't been done here? They
12 didn't pay you \$250,000 to do a statistical sample; did
13 they?

14 A. That's correct, they did not.

15 Q. They paid you \$250,000 to create 37 charts about
16 how we spent our money and where it went, right?

17 A. I think there's a lot in those charts besides how
18 we spent the money and where it went.

19 Q. And according to your own testimony, you didn't
20 really even get to finish, sounds like?

21 A. Get to finish what?

22 Q. Well, you didn't have all the records. Did you
23 tell them, hey, I don't have all the records, I've got
24 more work to do?

25 A. I did say that I was missing some records and I

1 could do more work, yes.

2 Q. And -- and so I guess -- did they pay for your --
3 your -- your -- or are you going to -- they haven't even
4 caught up, are you going to bill them for the -- I
5 presume you flew down here?

6 A. Correct.

7 Q. And I presume that you stayed in a hotel?

8 A. Correct.

9 Q. Rented a car?

10 A. Yes.

11 Q. All right. And so you're going to put that on
12 your bill?

13 A. They reimburse for expenses.

14 Q. Is that part of the contract that they're going
15 to pay for all your travel and expenses?

16 A. Correct.

17 Q. Reimburse for your meals?

18 A. Well, the Government does this funky thing with
19 per diems, but, yes.

20 Q. Let's do this math. Do you have -- maybe you've
21 already done it. I didn't see it anywhere, I didn't see
22 it in here.

23 Do you know what these -- what these total, what
24 these amounts here on the Counts Two to Seven, do you
25 know what they total?

1 A. I don't, and -- 17, 18, call it -- 19, 20,000.

2 Q. 2,567.52 plus 4,089.52 plus 4,304.70 plus
3 4,448.19 plus 3,202.85 plus 1,282.61.

4 That look about right?

5 A. It does.

6 Q. So we got a total here of 19,895.39, right?

7 A. Correct.

8 Q. That's, what, \$19,895.39, that's the total amount
9 of payments, that's the payment, right, that's the
10 payment for Counts Two to Seven, is what that totals up
11 to, do you agree?

12 A. I agree.

13 MR. HECTOR CANALES: Pass the witness.

14 THE COURT: Does anybody need a break?
15 Mr. Cyganiewicz.

16 MR. CYGANIEWICZ: Your Honor, I'm going to
17 yield my time to Mr. Guerra.

18 I have no questions of this witness.

19 THE COURT: Mr. Guerra.

20 MR. GUERRA: Thank you, Your Honor.

21 May I proceed?

22 THE COURT: Please.

23 CROSS-EXAMINATION

24 BY MR. GUERRA:

25 Q. Mr. Petron, good morning, sir.

1 A. Good morning.

2 Q. How are you?

3 A. I'm well. You?

4 Q. I'm hanging in there. It's been a long couple
5 weeks.

6 Mr. Petron, based on the -- the CV that
7 Mr. Canales brought up and showed you and the ladies and
8 gentlemen of the jury earlier, you list on there about
9 25 cases, does that sound about right?

10 A. Sure.

11 Q. Okay. Unfortunately, I know you're -- you
12 probably like details, so do we, so we counted them up
13 and it was 25, I'll offer to you.

14 Are you aware that 20 out of those 25 cases
15 are where you testified on behalf of the Government?

16 A. I'm aware.

17 Q. Okay. Does that sound about right to you?

18 A. Sure.

19 Q. Okay. In this case, you testified earlier to the
20 ladies and gentlemen of the jury that you've billed the
21 Government \$250,000, correct?

22 A. Correct.

23 Q. You've only been paid about 123,000; is that
24 right?

25 A. Correct.

1 Q. And I understand, you know, bills get paid or
2 don't get paid on occasion, but that money has been
3 incurred since October 2017; is that right?

4 A. Correct. That's over the course of the last two
5 years.

6 Q. Right. Do you know how long Dr. Francisco Pena
7 worked for the Merida Group?

8 A. I do not.

9 Q. Okay. It was in your summary charts, and I'll
10 offer to you that it was from 2012 to 2017.

11 A. Okay.

12 Q. Okay? And I believe your testimony earlier was
13 that during that time period that Dr. Pena was paid
14 \$108,000 during that time period for Merida; is that
15 about right?

16 A. You're testing my memory. I believe that's about
17 right.

18 Q. Sure, we can bring it up if you need us to but --

19 A. If -- if you know that that's the number, that's
20 the number that's in my head, but --

21 Q. Well, that was the number that was on the H
22 series exhibits that Mr. -- Mr. Lowell and Canales
23 showed up there.

24 A. Perfect. Those numbers are accurate.

25 Q. So from 2012 to 2017, \$108,000, how much is that

1 per year, just averaged out annually?

2 A. 20 -- 20 something.

3 Q. I'm not going to get out my I-Phone because I'm
4 pretty sure that's easy for both of us to figure out. A
5 little over 20,000 a year; is that right? How much is
6 that a month, again, average, ballpark?

7 A. Average ballpark call it 8-, 9,000.

8 Q. No, no, no, I'm sorry, if it it's 20,000 a year?

9 A. I'm sorry, I'm -- I'm --

10 Q. Again, I'm not the math guy, you are, but in my
11 feeble attorney mind that's about \$2,000?

12 A. A little less than.

13 Q. A little less, give or take, right?

14 A. Right.

15 Q. Could we go ahead and call up Government Exhibit,
16 Roy, H-17. I think even the equipment is cold, it needs
17 to warm up a little bit as well.

18 But I'll offer to you this is Government's
19 Exhibit H-17 and it shows, as you testified to with Mr.
20 Lowell, that Professional paid Dr. Pena about \$2,000 for
21 this particular time period; is that right?

22 A. Correct.

23 Q. Okay. Roy, could we call up Government Exhibit
24 H-18, please.

25 And again, here \$2,000 for this time period

1 Professional to Dr. Pena; is that right?

2 A. Correct. So that's consistent with the monthly
3 calculation that we just did.

4 Q. Absolutely. And then just so we get them all out
5 because I know you talked about this with Mr. Lowell.

6 H-19, Roy, please.

7 This is \$5,000, but the memo line notes that it's
8 for two months, right?

9 A. Correct. Correct.

10 Q. That's about right. And I take it you're a
11 baseball fan, right?

12 A. I'm a sports fan.

13 Q. As am I. But you are familiar in baseball
14 there's a term, crooked number, you know.

15 Unfortunately, when my Astros are losing the World
16 Series is because they only scored one run an inning and
17 your Nationals would score two or three in an inning and
18 they would call that a crooked number, right?

19 A. If you say so.

20 Q. Well, one is one, a crooked number like a two,
21 exactly.

22 Roy, could we call up Exhibit H-20, Government
23 Exhibit H-20.

24 Now, this is what I would call a crooked number,
25 not because it's crooked, but because it's not \$2,000 or

1 \$5,000, right? What's the number on the screen?

2 A. 5750.

3 Q. 5750, there's all sorts of squiggly lines if we
4 were to write it out, you know. That was paid to
5 Dr. Carrillo, right?

6 A. Yes, I would not call that a crooked number in
7 your definition of the word crooked.

8 Q. Well, to me there's more numbers than there are
9 zeros, basically, 575.

10 Let's go to H-21, Roy.

11 There's eleven, six. Again, there's all sorts of
12 numbers, but, my point --

13 A. Well, there's zeros, too, though.

14 Q. What's that?

15 A. I said, there's -- I mean, if the definition that
16 we're trying to get at is zero versus not, then there's
17 a bunch of zeros here as well so --

18 Q. No. And in fact, this is the very simple
19 point I'm trying to make, Mr. Petron.

20 These checks look different than the checks that
21 were given to Mr. Pena; is that right?

22 A. In -- in what way, just that they're larger in
23 amount.

24 Q. Larger in amount, different numbers. The -- the
25 three checks the Government showed you and that I showed

1 you for Dr. Pena were straight \$2,000, \$2,000 and a
2 \$5,000 for two months, correct?

3 A. Correct.

4 Q. And as you've testified earlier, based on your
5 math, that kind of is consistent with paying a flat
6 monthly rate, correct?

7 A. The average is about a little less than 2,000
8 so --

9 Q. But I understand. But, actually, you said,
10 yourself that that's consistent with the item up here.

11 A. That's consistent, absolutely.

12 Q. Yeah. We don't know what's going on here; is
13 that right?

14 A. I do not know specifically what the derivation of
15 the \$11,600 is.

16 Q. And that's exactly right. You're only here for
17 the interpretation of numbers?

18 A. I wouldn't even say I'm here for the
19 interpretation of them, I'm just here to tell you what
20 the numbers are.

21 Q. Crunching numbers, right? I mean, you did do
22 some calculation, did you not?

23 A. I did.

24 Q. You took some out, you played around with an
25 excel spreadsheet and that's how you got the

1 summary exhibits that Mr. Canales showed you, correct?

2 A. Correct. I summarized all that information.

3 Q. Yeah, and I'm not trying to say that you made
4 stuff up, Mr. Petron.

5 A. Good because I did not.

6 Q. And I'm not accusing you of that, sir, but you
7 know, I know that you took the data and you would take a
8 column from an excel spread sheet, a couple of columns
9 that were relevant to your calculations and then put
10 them in other exhibit and that's how we got these
11 30-plus pages that Mr. Canales talked to you about; is
12 that about right?

13 A. Correct. I summarized about 800,000 records.

14 Q. Summarized, whatever, you used excel
15 spreadsheets, took relevant data out of those columns,
16 charts and made these, correct?

17 A. Correct.

18 Q. Before I forget, how much have you billed the
19 United States Government during your professional career
20 as a -- in your capacity right now?

21 A. I have no idea.

22 Q. Would it be more than \$1,000,000?

23 A. Probably, yes.

24 Q. More than 2,000,000?

25 A. I don't know.

1 Q. 20 cases? And I mean the \$250,000 that you
2 billed the United States Government to date in this
3 case, is that par for the course for you given what you
4 do?

5 A. This is a somewhat larger than normal case.

6 Q. Okay.

7 A. Not the largest case I've ever worked on, but
8 larger than average.

9 Q. Okay, this is the largest case you've ever worked
10 on?

11 A. I said this is not the largest case I've ever
12 worked on.

13 Q. Oh, I'm sorry, okay. So 250,000 would be less
14 than what you would normally charge given the size of
15 those other cases, correct?

16 A. So I'll be clear. This is a larger case than I
17 normally work on.

18 Q. Right.

19 A. But not the largest case I've ever worked on.

20 Q. Mr. Petron, would it be outside the realm of
21 possibility that you've billed the United States
22 Government for professional services over \$2,000,000 in
23 your career?

24 A. In my career?

25 Q. Yeah.

1 A. 20 years, probable -- possibly.

2 Q. Oh my gosh, 20 years. Well, how about in the
3 past five?

4 A. I don't know. I don't know the numbers.

5 Q. Okay. You don't know how much you've billed the
6 Government over the past five years?

7 A. I do not.

8 Q. You're a number guys, right?

9 A. I am.

10 Q. You're the managing partner of your office?

11 A. I have lots of things to manage.

12 Q. Well, but also as the managing partner of your
13 office, what you do manage, I mean you're in business,
14 right?

15 A. I am.

16 Q. Part of the things have you to manage is how much
17 money is coming in this; is it not?

18 A. It is.

19 Q. And as the managing partner of your business, you
20 do know how much you and the other people beneath you
21 are billing, correct?

22 A. Not in the level of detail that you're asking me.

23 Q. Really? Is Stout, the -- the office you work for
24 for Stout, is it just a single office, or is it part of
25 a larger firm?

1 A. It's part of a larger firm.

2 Q. Right. And is there a managing partner of the
3 entire firm?

4 A. We have a president.

5 Q. Oh, okay.

6 A. CEO.

7 Q. You have a CEO of your firm, correct?

8 A. Mr. Stout.

9 Q. Oh, okay. I didn't know there was a Mr. Stout.
10 You -- you report to Mr. Stout as the managing partner
11 for your branch office, correct?

12 A. Indirectly, yes.

13 Q. Well, no, no, not even indirectly. I would
14 imagine Mr. Stout wants to know the financial health of
15 each and every individual office, correct?

16 A. I report to someone named Mr. Risius, and
17 Mr. Risius is a partner with Mr. Stout.

18 Q. Okay. And, but I guess, and let me get to my
19 question, Mr. Petron.

20 Being an office, part of the larger firm and the
21 managing partner of said office, you would have access
22 to know how much money your office brings in because you
23 have to report that up the chain; do you not?

24 A. I could get access to the information, I just
25 don't know it.

1 Q. Okay. And how much has your office billed the
2 Government, not just you, but your office billed the
3 Government?

4 A. I have no idea.

5 Q. In the past year you don't know how much your
6 office has billed the Government?

7 A. I do not.

8 Q. If I were to -- wanted to hire you, I believe you
9 told Mr. Canales that your hourly rate was \$365 an hour?

10 A. Correct.

11 Q. Do you have a flat fee for testifying?

12 A. I do not.

13 Q. So you've been on the clock since the moment you
14 stepped on the plane in Washington, D.C. to come down?

15 A. That's not -- no.

16 Q. How does it work?

17 A. I only charge when I'm actually working.

18 Q. So were you working yesterday when you were
19 sitting in the back of that courtroom watching
20 testimony?

21 A. I've never been in this courtroom before.

22 Q. You weren't here yesterday taking notes?

23 A. No.

24 Q. My apologies. When did you arrive?

25 A. I arrived Monday evening.

1 Q. Okay. And were you billing then?

2 A. No.

3 Q. Only when you walked into this courthouse?

4 A. I only bill when I work.

5 Q. Okay. And have you worked since you've been here
6 Monday?

7 A. I have prepared, yes.

8 Q. Right. In meeting with the Government?

9 A. I have once.

10 Q. How -- how much have you billed since you've been
11 in Brownsville, Texas, sir?

12 A. I don't know. I haven't done my time yet for
13 this week.

14 Q. And I know --

15 A. So I mean, call it maybe eight to ten hours, not
16 including today.

17 Q. Okay. Not including today of course, and that's
18 prep time; is that right?

19 A. Correct.

20 Q. So we'll add that at the very least to the
21 \$250,000?

22 A. You could, yes.

23 Q. Do you have a services contract with the
24 Government?

25 A. What do you mean by a services contract?

1 Q. Sure. Basically, when -- to get hired to testify
2 I would imagine you're not -- I mean, you're not an
3 employee of the United States Government, correct?

4 A. Correct.

5 Q. Have you ever been an employee of the
6 United States Government?

7 A. No.

8 Q. Have you ever had a DOJ dot gov e-mail address?

9 A. I have.

10 Q. Do you currently have that e-mail address?

11 A. I believe it is active, yes.

12 Q. Why do you have -- and I imagine that's the
13 e-mail address for anyone working with the United States
14 Government; is that right?

15 A. Yeah, correct. I have it because a lot of the
16 information that I get is sensitive health care
17 information, otherwise protected Grand Jury information,
18 and so the Government provides me a mechanism to get
19 that information securely.

20 Q. Okay. How long have you had that e-mail address,
21 sir?

22 A. Eight years, nine years maybe.

23 Q. How much of your personal business is derived
24 from testifying as an expert witness for the DOJ?

25 A. Not much. You know, testimony is not something

1 that occurs, even though I have done it a number of
2 times, it's not something that occurs frequently. So I
3 would say a very small portion of it is from testimony.

4 Q. And that's a bad question on my part, and let me
5 rephrase it.

6 A. Sure.

7 Q. And I know the distinction you're making.

8 How much of your personal business, your
9 collection you bring into Stout, how much of it is based
10 on working for the United States Government?

11 A. It varies, obviously, from time to time and case
12 to case.

13 Q. No, no, no, no, I'm saying total. Like as we sit
14 here today, if we were to look at the income sheet for
15 Michael Petron bringing money into Stout, how much of
16 that money comes from working for the DOJ?

17 A. It varies from time to time, so if you give me a
18 time period I can try to estimate for you.

19 Q. Within the past year?

20 A. I'd probably estimate two-thirds to 70 percent.

21 Q. 70 percent of your personal income into Stout
22 comes from working with the DOJ, correct?

23 A. I would say my personal revenue, if you want to
24 call it, origination revenue, something like that.

25 Q. Okay. And as we sit here today, you don't know

1 how much money that is; that right?

2 A. I do not.

3 Q. And I believe your testimony with Mr. Canales was
4 that you did not conduct any sort of statistical
5 analysis, come up with a statistical tool to find out
6 how many of those claims that we talked about, those --
7 those 14,000 claims, whatever it was, were fraudulent;
8 is that right?

9 A. Correct, I developed no statistical sample.

10 Q. You weren't asked to do it; is that right?

11 A. Correct.

12 Q. You didn't offer it to the Government, did you?

13 A. It's something they know I can do if they need
14 that to be done, yes.

15 Q. Right. But as you're sitting here, you're
16 looking at it, you're going, oh my gosh, this is so
17 much. Hey, guys, we need to conduct a statistical
18 analysis to find out how much fraud is here, did you do
19 that?

20 A. So generally speaking in a case like this we
21 would not do that so --

22 Q. But -- and I know Mr. Petron, you didn't do it,
23 but I'm asking did you offer it to the Government?

24 A. Did I offer it?

25 Q. Sure. Did you suggest it and say, hey, we need

1 to do this?

2 A. I don't remember one way or the other.

3 Q. And was we sit here today, you didn't go through
4 and -- and you can't tell the ladies and gentlemen of
5 the jury how much any of those figures up there are
6 based on fraud; is that right?

7 A. No, my job is not the -- to give an opinion on
8 what is fraud or not fraud, my -- I'm just here to
9 summarize and add up the information.

10 Q. Right. And so -- and I believe you testified
11 this with Mr. Canales, you didn't look at any medical
12 files; is that right?

13 A. I did not.

14 Q. All right. You did not conduct any sort of
15 medical review on these things; is that right?

16 A. Correct, I did not.

17 Q. You're not familiar with the way patients are
18 referred in Laredo; is that correct?

19 A. I mean, I have a general understanding of --

20 Q. No, no, you don't know how patients are referred
21 in Laredo, Texas; is that correct?

22 A. I don't have any specific knowledge.

23 Q. Thank you. And you don't know anything about
24 Dr. Pena other than he showed up in these columns; is
25 that correct?

1 A. Correct.

2 Q. You don't know what his relationship is to
3 Mr. Mesquias; do you?

4 A. Besides the financial information that we've
5 already talked about, no.

6 Q. The \$108,000, besides that, you don't know what
7 the contractual agreement between Dr. Pena and Merida
8 Group is, correct?

9 A. Correct.

10 Q. You've never -- you never reviewed that
11 contract?

12 A. I did not review the contract.

13 Q. You never asked to review the contract?

14 A. I don't remember if I did or I did not.

15 MR. GUERRA: Pass the witness, Your Honor.

16 THE COURT: Mr. Lowell.

17 MR. LOWELL: Thank you, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. LOWELL:

20 Q. Mr. Petron, you were asked about the nine --
21 9,000 patients at the Merida Group; do you remember
22 those questions?

23 A. I do.

24 Q. Now, if Merida Group employees were to tell you
25 that between 70 and 80 percent of those 9,000 patients

1 didn't qualify for services, would that concern you?

2 A. Absolutely.

3 Q. Can you tell the jury why?

4 A. That would imply that there are 8,000 patients
5 that are being billed to Medicare that otherwise don't
6 qualify for the services for which Medicare is paying.

7 Q. You were also asked about the six patients; do
8 you remember that?

9 A. I do.

10 Q. And you mentioned something about in your
11 experience the Government typically charges a small
12 collection of patients; is that right?

13 A. Correct.

14 Q. How long would be -- will you be in this
15 courtroom if we went through every single patient in
16 that population?

17 A. By billings would go up substantially, so it
18 would be hours and hours and hours to detail on
19 beneficiary by beneficiary basis all of their billings.

20 Q. How long would we be sitting in the courtroom?

21 A. We would be here for months.

22 Q. Now, you also had some questions about business
23 expenses; do you remember those?

24 A. I do.

25 Q. What, if anything, did you observe about the

1 business expenses at the Merida Group?

2 A. Well, when I examined the credit cards, I
3 classified personal expenses that we've gone over and
4 business expenses, and there were substantial volumes of
5 both.

6 Q. Anything unusual?

7 A. Well, unusual in the sense of there are business
8 expenses being spent for personal reasons, that could
9 become problematic.

10 Q. How?

11 A. You have certain tax issues that arise in that
12 situation and so that would, you know, give rise to
13 further investigation.

14 Q. For what?

15 A. Potential tax evasion, tax fraud, things of that
16 nature.

17 MR. LOWELL: Pass the witness, Your Honor.

18 THE COURT: Mr. Canales.

19 RECROSS-EXAMINATION

20 BY MR. HECTOR CANALES:

21 Q. Mr. Petron, you are why aware, sir, are you not,
22 that the Medicare has a program integrity manual for
23 statistical sampling and overpayment estimation, right?

24 A. Yes, I'm very familiar with it.

25 Q. This is it, right?

1 A. Yes.

2 Q. So there's an entire -- and there's an entire
3 manual about how to do statistical sampling for
4 overpayments and estimations, right?

5 A. There is.

6 Q. There's a rule for how to do it?

7 A. There's guidelines I would say.

8 Q. Okay. Right.

9 A. But those guidelines are applicable in a very
10 narrow set of administrative procedures, not here in a
11 criminal court.

12 Q. Oh, okay. All right. But -- but there's
13 statistical ways to accomplish the task to avoid having
14 to have -- be here for years if the Government wants to?

15 A. There are statistical ways that one could draw a
16 sample, yes.

17 Q. Okay. All right. And, sir, I just -- can I get
18 the ELMO back?

19 THE CLERK: Yes, sir.

20 Q. (By Mr. Hector Canales) Here, going back here,
21 is this a fair summary of your hourly rate? Is it
22 accurate?

23 A. It is.

24 Q. And the amount of you charged and the pages that
25 we went over; remember that?

1 MR. LOWELL: Objection, asked and answered.

2 MR. HECTOR CANALES: I'm just laying --

3 THE COURT: I haven't heard the question.

4 MR. HECTOR CANALES: I just want to lay a
5 foun -- well, let me just do this, Judge.

6 I want to offer and mark as Defendant's
7 Exhibit RM-102 under Federal Rule of Evidence 1006 a
8 summary of the witness' testimony.

9 MR. LOWELL: Objection, Your Honor. Summary
10 of what?

11 MR. HECTOR CANALES: Of his -- of his
12 testimony, Your Honor. They've -- they've -- under Rule
13 1006 I can offer a document that fairly summarizes his
14 testimony.

15 MR. LOWELL: Your Honor, the bottom line is
16 inaccurate.

17 MR. HECTOR CANALES: Well, he said .06. We
18 did the math.

19 THE COURT: All right.

20 MR. HECTOR CANALES: That's what I was
21 trying do when he objected.

22 THE COURT: He wants to admit this
23 handwritten note, any objection to his --

24 MR. LOWELL: Your Honor, we object. That's
25 Mr. Canales' interpretation of the 9,000 patients, he's

1 suggesting inappropriately to the jury that there was
2 less than one percent of patients who did not qualify
3 for hospice.

4 MR. HECTOR CANALES: Your Honor, I'm not
5 saying that, Your Honor. That wasn't his testimony.
6 His testimony was, I asked him 9,339 and six of that
7 what percentage --

8 THE COURT: Mr. Canales, the objection is
9 sustained. I'll allow you to use your handwritten note
10 for demonstrative purposes, but as an exhibit --

11 MR. HECTOR CANALES: For the record,
12 Your Honor, I want to make sure and let the Court be
13 aware that I'm offering this pursuant to Federal Rule of
14 Evidence 1006 which specifically allows for this exact
15 type of -- of document, not just to be demonstrative but
16 to be evidence for the jury to take with them.

17 THE COURT: Overruled.

18 MR. HECTOR CANALES: Tender this as a bill
19 then, Your Honor. I'd like to have this marked as
20 Defendant's Exhibit 1 as a -- as a bill.

21 THE COURT: That will be allowed.

22 MR. HECTOR CANALES: Thank you, Your Honor.
23 Pass the witness.

24 THE COURT: One second.

25 MR. GUERRA: Nothing further, Your Honor. I

1 have no further questions.

2 THE COURT: Anything else, Mr. Lowell?

3 MR. LOWELL: Nothing further, Your Honor.

4 THE COURT: Thank you, sir. You may step
5 down.

6 Ladies and gentlemen, let's go ahead -- do
7 we have another witness?

8 MR. LOWELL: We can take a break.

9 No more witnesses, Your Honor, that was our
10 last witness.

11 THE COURT: Wait, wait, one second.
12 You're -- you're excused, sir.

13 Government's update, please?

14 MR. LOWELL: Good news that was our last
15 witness, the Government rests.

16 THE COURT: All right. Ladies and
17 gentlemen, I realize I jinxed everybody by complimenting
18 everyone on their promptness and the late starting, I
19 know we had some trouble with -- with that, but you're
20 going to get a nice surprise today. I've granted a
21 request for -- we're going to start the defense on
22 Monday. Everybody get a -- as I explained in my opening
23 instructions, the trial will proceed in numerous stages.

24 First, the Government gets to go first,
25 present their case; then we will have defense. We'll

1 start the defense on Monday.

2 Have a nice long weekend, have a nice break
3 and -- but again, absent some kind of minor emergency,
4 again, let's keep to our promptness, let's have everyone
5 here promptly before 9:00 a.m., all right?

6 You're excused at this time.

7 COURT OFFICER: All rise for the jury.

8 (JURY OUT.)

9 THE COURT: All right, gentlemen. We'll be
10 in recess.

11 Gentlemen, we're going -- again, we'll start
12 promptly at 9:00. Have a nice weekend, make sure you --

13 MR. HECTOR CANALES: Your Honor, we'd like
14 to make our -- our motions right now. I think it's a
15 proper time and be a good use of the Court's time.

16 THE COURT: Do you all need a quick break
17 before we do that?

18 MR. HECTOR CANALES: Five minutes to
19 organize but we'd like to --

20 THE COURT: Let's take a quick recess and
21 we'll come back momentarily.

22 (COURT IN SHORT RECESS.)

23 THE COURT: Thank you, everyone. Please be
24 seated.

25 Gentlemen, please come forward. All right.

1 Let the record reflect that the Government has rested
2 its case in chief. The jury is no longer present.

3 Gentlemen, it's my understanding that the
4 defense would like to bring up some issues, some
5 motions. Please proceed.

6 MR. HECTOR CANALES: Yes, Your Honor. Thank
7 you very much.

8 Hector Canales on behalf of Defendant Rodney
9 Mesquias. At this time, Your Honor, now that the
10 Government has rested its case in chief, we bring forth
11 a timely, a Motion for -- for Acquittal of -- based on
12 the fact, Your Honor, that there is -- and we would move
13 that as to Rodney Mesquias Counts One through Seven,
14 Count Eight, Count 11 and Count 12, that Mr. Mesquias is
15 named in, in the indictment, as well as the forfeiture
16 portions of the indictment be dismissed on the basis
17 that there's insufficient evidence to sustain a
18 conviction as it is presently -- as the Government has
19 put in their -- in their case.

20 Notably, Your Honor, I would tender to the
21 Court for its consideration, United States v Ganji, 880
22 F.3rd 760, Fifth Circuit case, 20 -- 2018, I'm tendering
23 a copy to -- to opposing counsel, and I'll hand to the
24 Court as well.

25 Most notably, this was a case where the

1 Fifth Circuit, Your Honor, reversed an acquittal at the
2 trial court -- a conviction at the trial Court level
3 involving home health care. And the Fifth Circuit in
4 this case reasoned that a fraud cannot be the basis --
5 legal activity cannot be the basis of a fraud.

6 In the Ganji case, Your Honor, you had a
7 physician who was referring patients to a home health
8 care company and the Government -- and that physician
9 was being compensated with a -- under a professional
10 services agreement for the referral of those patients to
11 the -- to that home -- home health where she served as a
12 medical director, the exact fact pattern we have in this
13 particular case.

14 But the Fifth Circuit noted, as the
15 testimony in this case is, that such practice is legal,
16 that the referring to a -- a doctor referring to a home
17 health agency, or a hospice, which he's a medical
18 director is legal. It is -- there's no prohibition in
19 the regulations, or in the statute from -- for such.
20 And the Ganji Court recognized, in fact, that that is a
21 legal preference. And they gave credence to the idea of
22 the continuity of care.

23 And so the bottom line, Your Honor, is that
24 the activities that the Government is basing, in
25 particular, Your Honor, their conspiracy count for

1 conspiracy for -- to violate the Anti-Kickback Statute,
2 is premised on legal activity.

3 The evidence in this case is that -- that
4 Dr. Virlar, Dr. Pena, Dr. Carrillo had medical
5 directorship agreements, that they were paid, and that
6 is illegal -- it is legal to refer their patients to a
7 hospice and/or home health at which they are the -- the
8 medical director.

9 Therefore, they cannot be held liable for
10 fraud as the result of legal activity.

11 Moreover, Your Honor, on the anti-kickback
12 side, we have the safe harbor provisions, that payments
13 were made pursuant to a written contract for
14 professional services. And there is evidence of -- of
15 that -- of that as well.

16 So -- and secondly, Your Honor, I'll tender
17 to the Court another case. This is a -- actually, a
18 memorandum and opinion order out of the Northern
19 District of Dallas by Chief Judge Barbara Lynn. It's in
20 United States ex rel Wall v Vista Hospice Care, and I
21 will tender a copy to the Court, and I think I've got
22 two. Here, you can have that one.

23 Now, Judge, this case is a false claims qui
24 tam case, but it involves hospice, and it involves the
25 False Claims Act. And so while the -- as the Court is

1 well aware there are several mechanisms in which the
2 Government can pursue fraudulent claims, health care
3 fraud claims. They can do it civilly through the False
4 Claims Act, they can even do it criminally through the
5 False Claims Act, you can do it through the Health Care
6 Fraud Statute and/or the Anti-Kickback.

7 But -- but, Judge Lynn in this case does an
8 excellent review of the hospice rules, regulations. And
9 this case deals with what I think we have here, which is
10 what is the Court to do when the case boils down to
11 differences of opinion? Hospice is a very unique
12 situation, Judge, for health care fraud.

13 I've done a considerable amount of research,
14 and there are very few hospice cases out there. There
15 are a lot of home health cases. And one of the
16 interesting things I'm sure the Court has seen and --
17 and -- through the evidence in this case is that hospice
18 is premised on a doctor's prognosis. We've probably
19 beat that horse a lot, but there's a reason for it,
20 Judge, and -- and these two opinions, especially this
21 particular opinion with Judge Lynn, brings this home
22 where fraud, right, fraud cannot be the basis of a
23 difference of -- mere difference of opinion of clinical
24 judgment between two doctors.

25 Now, in this case it's very important to

1 understand, Judge, and this is why -- and I would
2 anticipate Mr. Guerra will try to bring this home, but
3 there are no doctors' opinions in the case, right? And
4 to contradict, or if you do, you have, maybe -- maybe
5 you have Virlar versus Gonzaba, right, you have these --
6 but about a prognosis, about a prognosis of a terminal
7 illness, chocolate versus vanilla, I like chocolate, no
8 chocolate's better than vanilla, no, the Astros are
9 better than the -- those are differences of opinion that
10 cannot for the basis of fraud because two doctors'
11 opinions can be different and they can both be true.

12 And if the Court -- when the Court goes
13 through this order, done an excellent review of that,
14 and I'm going to take the time to take one quote. This
15 is part of the discussion. And it says "if all that was
16 necessary to proof falsity" -- falsity of the claims,
17 all right -- "if all that was necessary to prove falsity
18 was to put up a medical expert to review medical records
19 and provide an opinion at odds with that of the
20 certifying physician, hospice providers would be subject
21 to potential FCA, False Claims Act, liability, quote,
22 any time a relator could find a medical expert who
23 disagreed with the certifying physician's clinical
24 judgment, that situation would be directly at odds with
25 the assurances given by CMS that doctors need not --

1 need not fear the exercise of their medical judgment as
2 to the future course of a terminal patient."

3 That's what this case is about. Judge Lynn
4 recognized that, ruled accordingly, and we are asking
5 the Court here to grant our Motion of Acquittal on all
6 these counts against my client Mesquias because the --
7 the -- the -- arguably, the -- the Government doesn't
8 even have an expert opinion.

9 But even if you want to give them that, put
10 it in light most favorable to the Government, all we
11 have here, Judge, is a difference of opinion as to the
12 terminal prognosis of six patients. And that,
13 Your Honor, coupled with the fact that the payments were
14 subject to a professional services agreement under safe
15 harbor, that those referrals are legal, it's a legal
16 preference for the continuity of care purposes, warrants
17 a no reasonable juror could find and convict my client
18 on any of these counts, and we move, Your Honor, that
19 those counts be dismissed and our motion be granted.

20 Thank you.

21 THE COURT: I'm assuming everyone wants to
22 make a same or similar motion?

23 MR. CYGANIEWICZ: Judge, on behalf of
24 Mr. McInnis, we -- we adopt those arguments, and also
25 point out that Ganji case and Judge Lynn's ruling.

1 So let me formally ask for a directed
2 verdict of acquittal on behalf of Mr. McInnis on Counts
3 One, Two through Seven, Count Eight and Count 11 for
4 those same reasons argued by Mr. Canales.

5 And in addition, that we just seriously
6 submit that the Government has not met its burden of
7 proof that there's evidence sufficient, that they have
8 not proven every element of the offenses as required in
9 those counts, especially the money laundering count,
10 Your Honor. There's been no evidence, or at least
11 insufficient evidence presented at this point in time as
12 to Mr. McInnis on the money laundering, in particular,
13 and ask the Court to at least grant the Motion for
14 Directed Verdict as to that count as to Mr. McInnis.

15 And, again, for the record, Judge, we're
16 adopting and -- the arguments of counsel by -- of
17 Mr. Mesquias and ask for a ruling in our favor that a
18 Judgment of Acquittal be entered on behalf of
19 Mr. McInnis.

20 THE COURT: Mr. Guerra.

21 MR. GUERRA: Your Honor, Robert Guerra here
22 for Francisco Pena. We join in the Motion for Acquittal
23 made by counsel for Mr. Mesquias, as well as counsel for
24 Mr. McInnis. And we ask that the Court grant an
25 acquittal for Francisco Pena on Counts One, Three,

1 Eight, Nine, Ten and 12.

2 The evidence presented by the Government in
3 its case in chief is insufficient to sustain a
4 conviction. We believe that the jury could find --
5 could not find beyond a reasonable doubt that every
6 single element of the crimes that were made -- that were
7 accused were actually made in this case, Your Honor.

8 And specifically, we further adopt the
9 arguments made by Mr. Canales with regards to the
10 opinion of the Ganji case and the opinion out of the
11 Northern District of Texas, specifically with regards to
12 the Anti-Kickback Statute -- or excuse me, the kickback
13 count, which is Count 12.

14 There were three instances within that
15 indictment as to Dr. Pena. As the Court, who -- who sat
16 through the two weeks of direct evidence presented by
17 the Government doesn't show, and we have not seen any
18 direct evidence showing that those payments made were
19 part of any sort of kickback scheme.

20 The law allows under the safe harbor for a
21 medical director to refer patients to a hospice that
22 he's working at. That's what happened. We have
23 legitimate contracts that were made, and we have
24 legitimate payments that were made for medical service.

25 None of that is illegal and the Government

1 fails to meet its burden to show that Dr. Pena received
2 kickbacks for those referrals. That would be a clear
3 cut motion for -- ground for acquittal.

4 As to Counts One and Three, Your Honor,
5 again, the bulk of the testimony that this Court heard
6 and that the jury heard focused on activities well
7 outside of Laredo. The one substantive count,
8 Count Three, Francisca Perez, for the -- for the time
9 period of which the fraud was alleged, there was no
10 evidence, not even any medical evidence, which we argued
11 in our Motion to Exclude, but there was no evidence that
12 the certification during that period was fraudulent.
13 None.

14 And the reason why we filed our Motion in
15 Limine and Motion to Exclude was that the Government set
16 the ground rules. They said that the actions taken by
17 Dr. Pena were medically unnecessary. We asked them to
18 provide evidence of that; they failed to do so.

19 And as the Court would review Counts One, at
20 least Count One, the allegations as to all of the
21 Defendants, and in particular Dr. Pena, is that the
22 actions taken were medically unnecessary.

23 This Court and this jury heard no evidence
24 to that effect, much less any evidence that would
25 sustain a finding of guilt, Your Honor.

1 So for those reasons, we ask that a Motion
2 for Acquittal be granted for Dr. Pena on Counts One,
3 Three, Eight, Nine, Ten and 12.

4 THE COURT: Thank you.

5 MR. GUERRA: Thank you, Judge.

6 THE COURT: Government's response for each
7 respective motion?

8 MR. LOWELL: Thank you, Your Honor.

9 The motion should be denied in its entirety.
10 There has been compelling and overwhelming evidence
11 presented in this case, and it's been consistent.
12 Employee after employee after employee, doctor after
13 doctor, two of whom have pleaded guilty to committing
14 health care fraud, have testified in this case, pointed
15 the finger at Henry McInnis, Rodney Mesquias, Francisco
16 Pena as being involved in this conspiracy.

17 And what those two doctors did is they
18 clarified for the jury and for this courtroom that this
19 is not a medical opinion case.

20 Dr. Carrillo and Dr. Virlar took the stand
21 and they said, we were paid, and they were very clear,
22 we were paid to fraudulently rubber-stamp hospice
23 orders. We were paid to fraudulently rubber-stamp home
24 health orders, that was our job, we were not legitimate
25 doctors.

1 That cannot be the basis of a legitimate
2 professional services contract. There is no fraud
3 exception under the Anti-Kickback Statute.

4 So on their testimony -- testimony alone,
5 the motion should be denied.

6 The two cases are readily distinguishable
7 because it's not a medical opinion case. At virtually
8 every level of this company that the evidence that has
9 been elicited during this trial has shown every level
10 has been fraudulent.

11 And I want to focus on these -- the Pena
12 counts. The Court will recall that was Francisca Perez,
13 she was a substantive count tied to Dr. Pena. There was
14 evidence that Dr. Pena, Dr. Carrillo and Dr. Virlar all
15 signed fraudulent and false orders for Ms. Perez. And
16 we had the nursing home records for Ms. Perez which
17 reflected that she did not have the terminal diagnosis
18 that Dr. Pena put on his hospice order.

19 So for all those reasons, Your Honor, in
20 addition to all the employees that took the stand and
21 were quite clear, crystal clear that they acted at the
22 direction of Rodney Mesquias and Henry McInnis, and that
23 Dr. Pena was just another medical director in Laredo
24 doing the same exact thing.

25 And the Court saw the evidence today, the

1 hundred patients down in Laredo tying Dr. Pena to this
2 conspiracy. It's overwhelming. The motion should be
3 decide.

4 THE COURT: Mr. Guerra?

5 MR. GUERRA: Yes, Your Honor, briefly.

6 As the Court well knows and -- and given Mr.
7 Lowell's argument, the Court well knows Dr. Virlar and
8 Dr. Carrillo basically cited maybe one time they met
9 with Dr. Pena, and at no time did they even offer any
10 evidence that this was part of any scheme or any plan,
11 much less that Dr. Pena knew or was part of anything
12 that was going on, first of all.

13 Second of all, with regards to those medical
14 records, again, they didn't show the ladies and
15 gentlemen of the jury anything that showed Dr. Pena's
16 involvement with fraudulent certification.

17 Dr. Pena was outside of whatever Carrillo
18 and Virlar were doing, first of all. And second of all,
19 the Government needed to bring that evidence to light in
20 front of the jury, they didn't do it, we renew our
21 Motion for Acquittal on that count, Your Honor.

22 MR. LOWELL: Your Honor, just a couple of --
23 couple of witnesses, Your Honor, just for the record.
24 Ernesto Gonzalez, Roland Aguilar, Jose was one of the
25 sources who testified, as well as Joe Garza, all

1 testified clearly that Dr. Pena, like Dr. Virlar, and
2 like Dr. Carrillo, was being paid for patient referrals.

3 THE COURT: Thank you, gentlemen. All
4 right. Gentlemen.

5 MR. HECTOR CANALES: The only thing I'd like
6 to add, Your Honor, is just in the -- in the Wall case,
7 there is a discussion in there that I'd like to call to
8 the Court's attention about the role of statistical
9 analysis in hospice cases in extrapolating from a subset
10 to an entire patient population that I would really like
11 to call the Court's attention to in -- in that -- I
12 think it's extremely instructive about this last witness
13 and for any potential future proceedings.

14 Thank you.

15 THE COURT: All right. Thank you,
16 gentlemen. Respectfully gentlemen all three defense
17 motions are denied. The case will continue on Monday.

18 Anything else?

19 MR. HECTOR CANALES: No, Your Honor.

20 MR. GUERRA: No, Judge.

21 THE COURT: All right. We'll be in recess.

22 (COURT IN RECESS.)

23 THE COURT: Gentlemen, please come forward.

24 Ms. Sandra has asked that I come back to the courtroom.

25 What is the latest issue?

1 MR. TONY CANALES: We have an issue, Judge.

2 The Government in the past, the last two
3 weekends, pursuant to the batting order agreement that
4 we had, the Government at 5:00 on Sunday, each Sunday,
5 they've been giving the list of witnesses.

6 The Court yesterday when we talked, I
7 misspoke, as to when I could provide the list of
8 witnesses. They want it by today at 5:00. It's
9 impossible for me to do it today at 5:00. I would like
10 to be able to apply what's good for the goose is good
11 for the gander.

12 They allowed -- they didn't give me their
13 instructions, their list of witnesses until Sunday.
14 I'll be more than glad to do it by Sunday. I don't have
15 it today by 5:00 because what has happened, Judge, is
16 that the Government has been going around talking to our
17 witnesses, and when they've been talking to witnesses
18 from the last two weeks, some of the witnesses now are
19 getting a little bit shaky about coming in. So I'm
20 having trouble logistically bringing my witnesses.

21 I will be more than glad to give them the
22 list of witnesses that we plan to call by Sunday at
23 5:00, the same thing that they gave us, Sunday at 5:00.
24 I just cannot do it today by 5:00.

25 I'll -- I can come up with a bunch of names,

1 but that's not -- they're not -- they're not going to be
2 realistic names because I'm having trouble with them.

3 I've got to get them committed to be here.

4 THE COURT: All right. Mr. Lowell?

5 MR. LOWELL: Your Honor, just as an initial
6 matter, Mr. Canales went on the record just yesterday
7 and agreed to provide us with the updated list.

8 On Mr. Mesquias' list alone, there are 25
9 witnesses. They've represented that their case will
10 take two to three days.

11 We're not trying to waste this Court's time,
12 we do not want to waste the jury's time, I would just
13 suggest that Mr. Canales give us an updated list
14 consistent with what he represented in Court of who he
15 expects to testify in this case over those two to three
16 days.

17 THE COURT: Gentlemen, again, I don't
18 believe this is an exact science, to be quite frank,
19 again, and I don't know what lists or updates were given
20 between the parties. I did instruct you -- each party
21 to exercise due diligence.

22 For example, obviously, all can I say is,
23 for example, the Government gave me a list initially of
24 44 witnesses, obviously, we didn't call 44 witnesses.

25 So back to the point. If you need to -- the

1 lists are estimates, is an estimate, obviously, I'm not
2 telling you how to do your job, but I mean, if you need
3 to overestimate and cut down, obviously, that's a better
4 practice than -- than underestimating.

5 MR. TONY CANALES: Well, I could do that,
6 but, you know, I could do that, Judge. All I want to
7 have is the same -- same rule that I applied to him on
8 Sunday.

9 And -- and by the way, on all day Sunday, a
10 couple of times on Sunday, last Sunday we requested
11 of -- of the Government the list of witnesses, and they
12 didn't give it to us until 7:00 on a Sunday. The
13 previous Sunday the same thing.

14 I would -- I'll give them the names that
15 I've got because I'm having trouble.

16 Why am I having trouble? Because, you know,
17 logistics. So I'll give them the names, but I don't
18 want to do an over-inflated list of people that, you
19 know, that I'm not going to call, it's got to be a good
20 faith basis for it.

21 THE COURT: So Mr. Lowell, Mr. Canales has
22 already just stated that he doesn't believe he can give
23 you an accurate list by today. Is it correct that the
24 Government's practice was to provide the Government's
25 updated list on Sunday at what time?

1 MR. LOWELL: Your Honor, what we would do is
2 we gave -- we had an initial list of Government
3 witnesses and then every evening we would send the
4 specific witnesses that we intended to call the
5 following day. So it may have been three or four
6 witnesses we would e-mail to all counsel, sometimes it
7 varied each night when we'd get it to them, we made
8 substantial cuts as we've gone along as the Court has
9 noticed, but we did a daily update with the exception of
10 Saturdays of the witnesses that we intended to call the
11 following day.

12 THE COURT: All right.

13 MR. TONY CANALES: But when we left on a
14 Friday, I didn't even get any e-mail about the witnesses
15 for Monday, I didn't get the list until --

16 THE COURT: All right. Okay. If -- if --

17 MR. TONY CANALES: I have the e-mail right
18 here. My faithful assistant has got the e-mail.

19 THE COURT: So you're requesting to
20 update --

21 MR. TONY CANALES: On Friday?

22 THE COURT: -- on Sunday.

23 MR. TONY CANALES: I'm sorry, on Sunday.

24 THE COURT: On Sunday at what time?

25 MR. TONY CANALES: 7:00? Same time they

1 gave it to me.

2 THE COURT: Was it 7:00 or 5:00? I've heard
3 two different times.

4 MR. TONY CANALES: Don't be greedy Canales.
5 I'll take the 5:00, okay, I'll take the 5:00.

6 THE COURT: You've already given them your
7 initial list, obviously.

8 MR. TONY CANALES: Sure, sure we did.

9 THE COURT: All right. The Court will grant
10 your list to update by 5:00 on Sunday.

11 MR. TONY CANALES: On Sunday.

12 THE COURT: All right.

13 MR. TONY CANALES: Thank you, Your Honor,
14 that's it.

15 THE COURT: How many did you have on your
16 initial list?

17 MR. TONY CANALES: Oh gosh.

18 MR. LOWELL: 25, approximately.

19 MR. TONY CANALES: 25. It's going to be a
20 lot less.

21 THE COURT: All right. So again, each
22 party, I don't see Mr. Cyganiewicz, but instruct him.
23 Each party is instructed to attempt to give at least
24 prior notice the day -- the night before the witnesses
25 are called -- needed -- they intend to call the

1 following day.

2 MR. TONY CANALES: Yes, Your Honor.

3 MR. GUERRA: Yes. We understand Dr. Pena,
4 we've been working with the Government when it's our
5 turn.

6 THE COURT: All right, gentlemen.

7 Anything else?

8 MR. TONY CANALES: No, thank you.

9 MR. LOWELL: No, Your Honor.

10 THE COURT: All right. Have a nice weekend
11 everyone.

12 MR. LOWELL: Thank you.

13

14 REPORTER'S CERTIFICATE

15

16 I certify that the foregoing is a correct transcript
17 from the record of proceedings in the above-entitled
18 matter.

19

20

21 /s/Sheila E. Perales.
22 SHEILA E. HEINZ-PERALES CSR RPR CRR
Exp. Date: January 31, 2021

23

24

25